

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI**

**BRANDON LOVELESS, on behalf of  
himself and others similarly situated,**

*Plaintiff,*

**v.**

**ECOTECH, LLC, and  
MICHAEL AVRUSHENKO,**

*Defendants.*

**Case No. 4:19-CV-02698-SNLJ**

**JOINT MOTION FOR *IN CAMERA* REVIEW AND  
APPROVAL OF FLSA SETTLEMENT AGREEMENT**

Plaintiff, BRANDON LOVELESS (“Plaintiff”) and Defendants, ECOTECH, LLC and MICHAEL AVRUSHENKO (collectively “Defendants”), respectfully move the Court to review the parties’ settlement agreement *in camera*<sup>1</sup> and for an Order approving the parties’ settlement agreement pursuant to *Lynn’s Food Stores, Inc. v. U.S. Dep’t of Labor*, 679 F.2d 1350 (11th Cir. 1982) and *Donoho v. City of Pacific*, 2019 U.S. Dist. LEXIS 178876 (E.D. Mo. 2019) without the need for a hearing regarding the same. There has been no class certified in this case and while “the law is unsettled as to whether judicial approval of a proposed settlement of FLSA claims is required in the absence of a certified class” (*Donoho*, quoting *King v. Raineri Const., LLC*, No. 4:14-CV-1828 CEJ, 2015 U.S. Dist. LEXIS 17215, 2015 WL 631253, at 1 (E.D. Mo. Feb. 12, 2015)), this court in *Donoho* recognized that the Court’s failure to review the proposed settlement agreement would leave the parties in limbo. Therefore, out of an abundance of caution and even

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<sup>1</sup> In other cases involving the settlement of Fair Labor Standards Act (“FLSA”) claims, this court has permitted the *in camera* review of the parties’ proposed settlement agreement. *See, e.g., Sanderson v. City of Potosi*, No. 4:13-CV-1457 NAB, 2016 U.S. Dist. LEXIS 58524, at \*1-2 (E.D. Mo. May 3, 2016) (finding the proposed settlement was fair and reasonable, and approving such FLSA settlement, after “[t]he Court has conducted an *in camera* review of the parties’ settlement agreement and motion for court approval . . .”).

though no motion for conditional certification has yet been filed (let alone granted), the parties stipulate and agree that they have reached a fair and reasonable resolution of a bona fide dispute. The settlement was reached after the parties exchanged and reviewed employment related documents and engaged in weeks of negotiations based on Plaintiff's counsel's review and analysis of Plaintiff's payroll records produced by Defendant. Both parties are represented by counsel with experience in FLSA matters. The proposed settlement agreement is in the best interest of all parties.

Additionally, the FLSA mandates an award of reasonable attorneys' fees to a prevailing plaintiff. *See* 29 U.S.C. § 216(b); *Branson v. Pulaski Bank*, No. 4:12-cv-01444-DGK, 2015 WL 139759, at \* (W.D. Mo. Jan 12, 2015) (finding FLSA settlement agreement unenforceable because it failed to provide for an award of attorneys' fees). "The starting point in determining attorney fees is the lodestar which is calculated by multiplying the number of hours reasonably expended by the reasonable hourly rat[e]." *Fish v. St. Cloud State Univ.*, 295 F.3d 849, 851 (8th Cir. 2002). Plaintiff's counsel hereby represents that lead attorney, Robert Cowan worked at least 4 hours on this matter, at a rate of \$395, and associate attorney Katie McGregor worked at least 16 hours on this matter at a rate of \$250 per hour, including but not limited to investigating and researching claims before filing the lawsuit, preparing and drafting the complaint, reviewing and analyzing documents produced by Plaintiff and Defendant (including payroll records), calculating potential damages, client communications, settlement negotiations, and finalizing documents for settlement and approval. Additional time expended on the case by a paralegal has not been included, and Plaintiff will not be charged any additional attorneys' fees beyond the amount agreed upon in the proposed settlement agreement. The parties' counsel agree that the attorneys' fees and costs in the proposed settlement agreement are customary and reasonable for this jurisdiction in this type of

matter. Moreover, Plaintiff's counsel incurred approximately \$737.35 in reasonable necessary expenses as a result of this case. Such expenses primarily consisted of: filing fee, service of process fees, and postage. As such, the attorneys' fees and costs in the confidential proposed settlement agreement are reasonable and should be approved.

In furtherance of this motion and as directed by the court, the parties agree to provide the Honorable Judge Stephen L. Limbaugh, Jr. the parties' executed settlement agreement via e-mail, or whatever confidential method the Court prefers, in order to facilitate the Court's review of the same. Alternatively, should the Court necessitate a fairness hearing regarding the parties' settlement agreement, the parties' move for an Order setting a Telephonic Approval Hearing.

Dated: December 4, 2019

Respectfully submitted,

**BAILEY COWAN HECKAMAN PLLC**

**FORDHARRISON LLP**

/s/ Robert W. Cowan (w/consent)

/s/ Karen E. Milner

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*Counsel for Plaintiffs*

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on December 4, 2019, served a true and correct copy of the foregoing via the Court's e-filing system upon the following:

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